
SUMMARY

Action A.2: Legal basis

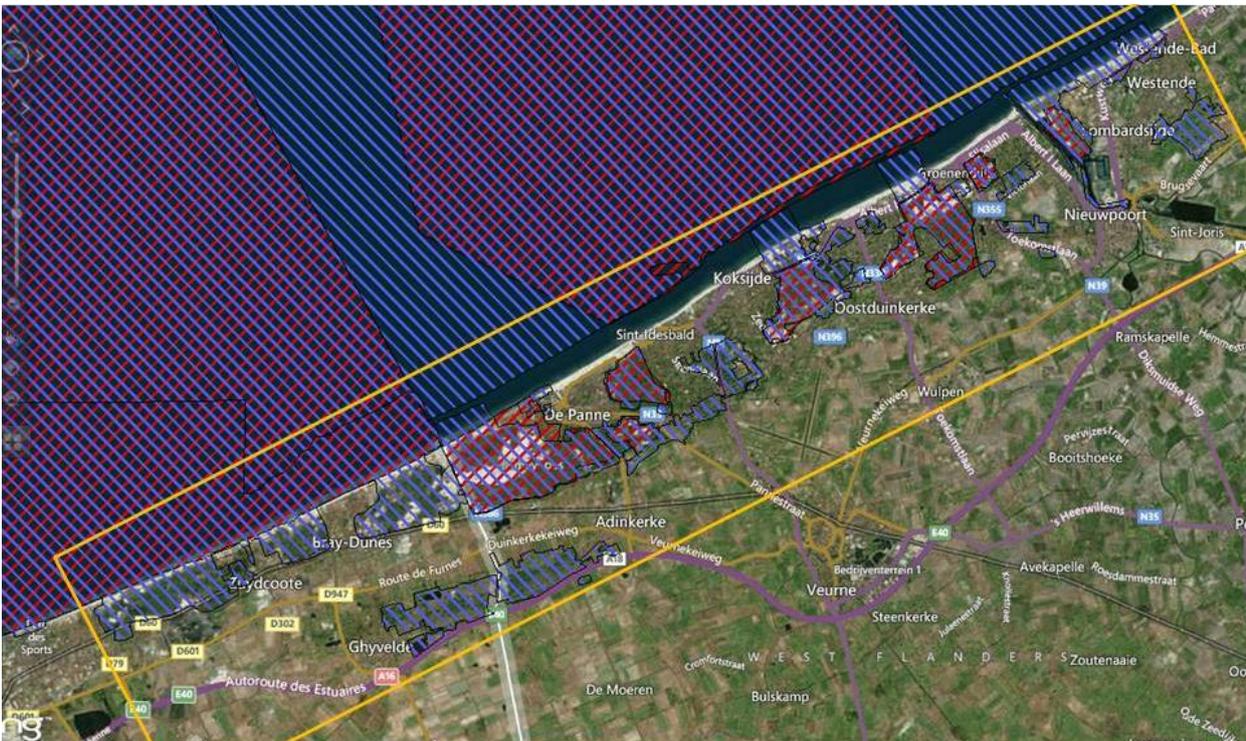
Life+12 NAT/BE/000631 'FLANDRE' (Flemish and North French Dunes Restoration)



Client: Agentschap voor Natuur en Bos
Your/ref: LIFE + FLANDRE A.2
Our/ref: 7371/1-11644/PDS/PDS
Date: 11/02/20

I. LIFE+ NATURE PROJECT 'FLANDRE'

The **LIFE+ NATURE project 'FLANDRE'** ('Flemish and North French Dunes Restoration') is a joint nature restoration project of the Flemish Agency for Nature and Forest ('*Agentschap voor Natuur en Bos*'), the French Conservatoire du Littoral et des Rivages Lacustres and the Département du Nord for the coastal dunes between Dunkerque (France) and Westende (Belgium), including several areas covered by the European Habitats Directive and the Birds Directive, and is co-funded by the European Union.



Delimitation of the project area: Special Protection Area ('SPA') Habitats Directive in blue; SPA Birds Directive in red).

In 2015 the partners to this project decided to examine the possibilities of transboundary cooperation. The partners called upon external legal consultants who were asked to write an extensive analysis on the possible legal forms of cooperation and to make a comparison between the different possibilities.

The development of a legal basis aims to establish a lasting cooperation between the partners who are all involved in the protection and management of the transboundary dune belts and to appoint the dune belts as transboundary nature park/area. The cooperation aims to harmonize the nature policy and conservation of these dunes, in order to arrive at a joint, coherent policy. The legal approach must also include the necessary legal and technical proposals needed to reconcile welcoming of visitors and nature conservation, with due regard for public accessibility that is in line with the ecological carrying capacity of the natural environment – in this case the dunes, a particularly vulnerable ecosystem.

II. THE LEGAL REPORT: OVERVIEW

The legal report was written by LDR lawyers (Ghent, BE), prof. dr. Betty QUEFFELEC of the Université de Bretagne Occidentale (FR) and prof. dr. An CLIQUET of the University of Ghent (BE). The report starts out defining the basic legal needs and intentions that the partners to this project have expressed during the preliminary interviews that were led by the legal consultants, such as the goals of cooperation, the financing, the organization, etc.

The report also examines the two supporting organizations. The Europarc Federation is an NGO that aims to create a transboundary network of European protected nature areas. The members of this organization include several nature parks in Belgium and France. The organization has also set out guidelines for transboundary Natura 2000 areas and nature parks. The Mission Opérationnelle Transfrontalière ('MOT') was founded in April of 1997 to provide operational support to the stakeholders of transboundary cooperation. The members of the MOT include member states, local and regional governments, and even federations and large companies.

Furthermore, the report examines the applicable (international and European) legal framework for the onshore part of the project area, as well as the offshore part of the project area within the Belgian and the French context. The report then goes on to discuss the available legal instruments for the transboundary cooperation and examples of existing transboundary cooperation models.

Finally, the legal report examines the results of the interviews that were held with the partners and the stakeholders concerning the organization and specific content of the intended transboundary cooperation and it concludes with a final recommendation for the partners and a summary of the legal basis that was chosen by the partners.

The annexes of the report include the interviews with the partners and the stakeholders and a first legal structure for the transboundary cooperation.

II.1. EXAMINED LEGAL BASES AND STRUCTURES

In the legal report a distinction is made between the possible legal bases that do not require a legal personality, versus the legal structures that do require a legal personality.

The forms of cooperation that do not require legal personality include adopting a legal framework, such as an international contract, a declaration of intent, a gentleman's agreement, or a memorandum of understanding. Whether the framework has a legally binding character or not, does not depend on the name given to the agreement, but rather on the legal terms in the document itself and the declared intent of the parties to the agreement.

The forms of cooperation that do require legal personality include the Benelux Grouping of Territorial Cooperation (based on the Benelux Treaty), the Local Cooperative for Transboundary Cooperation (based on the Brussels Agreement between France and Belgium) and the European Grouping of Territorial Cooperation (based on the EGTC Regulation).

Based on the analysis made in the legal report and the intentions of the partners to this project, the following legal forms of cooperation can be recommended:

- A *de facto* cooperative: this is the least binding form of cooperation based on the existing practice. In the future this form of cooperation can evolve into a more binding form of cooperation, e.g. the Parc Naturel Transfrontalier du Hainaut (FR/BE) and the Grenspark De Zoom – Kalmthoutse Heide (NL/BE).
- A memorandum of understanding: a non-binding contract that can form the legal basis of a future binding agreement.
- An international bilateral agreement: a binding agreement in which the parties include certain binding commitments and possible sanctions.
- The Local Cooperative for Transboundary Cooperation: an agreement between local and regional authorities based on the Agreement of Brussels.
- The European Grouping of Territorial Cooperation ('EGTC'): the most binding form of cooperation; possible in theory, however there is already an existing EGTC that covers the entire project area. Joining the existing EGTC is also possible.

II.2. CHOSEN FORM OF COOPERATION

Based on the legal report's recommendations and further discussions following the intermediary report, the partners have opted to use a non-binding memorandum of understanding as an initial basis for the intended transboundary cooperation.

The partners have chosen this structure as it serves as a flexible basis that can be adapted at any time depending on the needs of the parties. The memorandum of understanding creates a certain level of certainty for the future and provides a legal basis in which the parties to the memorandum can choose to include agreements on the territorial delimitation, the goals, the management, the financial limitation, the applicable law, etc.

In the longer term, the partners to this project would like to transition to a more binding form of cooperation. The preferred form of cooperation at this stage for a binding long-term cooperation is an EGTC.

The structure of an initial memorandum of understanding has been attached to the final legal report. However, certain questions need to be further discussed to finalize the memorandum of understanding, such as:

- What is to be understood under 'management of the area'? Which activities are included in management? At the present date, the cooperation does not have a legally binding basis and therefore no real management activities can be assigned yet. However, in the elaboration of a binding legal structure the answer to this question will be very important.
- Which goals do the partners wish to achieve together at the present date? Which activities should be undertaken together?
- Which communities or local authorities should be included in the cooperation and in which capacity should they be included? Do these communities receive equal participation rights?

II.3. CONCLUSION

The final legal report has been finalized in December 2018. The report provides five recommended forms of cooperation, ranging from very 'light', non-binding structures, to more extensive and binding structures with legal personality. The recommended legal bases for transboundary cooperation are the following: a *de facto* cooperative, a memorandum of understanding, an international bilateral agreement, a Local Cooperative for Transboundary Cooperation, or a European Grouping for Territorial Cooperation.

Based on its flexibility and non-binding character, the partners of this project have chosen to start with a memorandum of understanding as an initial legal basis for a transboundary cooperation.

The current memorandum of understanding sets out agreements on the delimitation of the project area, the goals of the transboundary cooperation, the financial obligation limitation, the legal status of the cooperation, the duration of the memorandum and the applicable law. Further discussions between the partners of the project are necessary to complete and to finalize the memorandum of understanding.

This concludes the legal research phase of the FLANDRE project.

Ghent, 4 January 2019.